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CENTRAL DISTRICT OF CALIFORNIA
BY: clee **DEPUTY**

Attorneys for Plaintiffs CARLA WADE, and N.A., a minor, by and through his guardian ad litem, SUMMER NELSON, Individually and as Successors in Interest of NEPHI ARREGUIN, Deceased

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

CARLA WADE, and N.A., a minor, by and through his guardian ad litem, SUMMER NELSON, Individually and as Successors in Interest of NEPHI ARREGUIN, Decedent,

Plaintiffs,

vs.

COUNTY OF LOS ANGELES, DEPUTY EDWARD FITZGERALD, and DOES 2 through 10, inclusive, individually and in their official capacities,

Defendants.

Case No.: 2:16-CV-03150-CAS (AGRx)

FIRST AMENDED COMPLAINT

DEMAND FOR JURY TRIAL

1. Excessive and Deadly Force, 42 U.S.C. §§ 1983, 1988;
2. Interference with Familial Relationship, 42 U.S.C. §§ 1983, 1988;
3. Wrongful Death, California Government Code §§ 815.2(a), 820(a); Civil Code § 43 and Code of Civil Procedure §§ 377.60, et seq.;
4. Assault and Battery, California Government Code §§ 815.2(a), 820(a); Civil Code § 43 and California Code of Civil Procedure § 377.20 et seq.; and
5. Civil Conspiracy, California and Federal Law, 42 U.S.C. §§ 1983, 1988.

FIRST AMENDED COMPLAINT

Plaintiffs CARLA WADE, and N.A., a minor, by and through his guardian ad litem, SUMMER NELSON, Individually and as Successors in Interest of NEPHI ARREGUIN, Decedent (collectively referred to herein as "Plaintiffs"), for their First Amended Complaint against Defendants COUNTY OF LOS ANGELES ("LA County"), DEPUTY EDWARD FITZGERALD and DOES 2 through 10, inclusive, individually and in their official capacities (collectively referred to herein as "Defendants"), alleges as follows:

JURISDICTION AND VENUE

1. This First Amended Complaint is asserted by Plaintiffs CARLA WADE, and N.A., a minor, by and through his guardian ad litem, SUMMER NELSON, Individually and as Successors in Interest of NEPHI ARREGUIN, Decedent, for compensation for:

a. **FIRST CAUSE OF ACTION**: In their capacities as Decedent's successors in interest, for the violation by Defendants of Decedent's rights secured by the Fourth Amendment to the United States Constitution to be secure in his person and to be free from the use of excessive and/or deadly force, pursuant to 42 U.S.C. §§ 1983, 1988, and California Code of Civil Procedure § 377.20 et seq.;

b. **SECOND CAUSE OF ACTION**: In their individual capacities, for the violation by Defendants of Plaintiffs' own rights under the First and Fourteenth Amendments to the United States Constitution to a familial relationship and companionship with Decedent, by using excessive and/or deadly force against Decedent, resulting in the death of Decedent and the termination of said relationship, pursuant to 42 U.S.C. §§ 1983, 1988;

c. **THIRD CAUSE OF ACTION**: In their individual capacities, for the Wrongful Death of Decedent by Defendants pursuant to California

Government Code §§ 815.2(a), 820(a); Civil Code § 43 and Code of Civil Procedure §§ 377.60, et seq.;

d. **FOURTH CAUSE OF ACTION**: In their capacities as Decedent's successors in interest, for Assault and Battery by Defendants pursuant to California Government Code §§ 815.2(a), 820(a); Civil Code § 43 and California Code of Civil Procedure § 377.20 et seq.; and

e. **FIFTH CAUSE OF ACTION**: In both their individual capacities and in their capacities as Decedent's successors in interest, for Civil Conspiracy under California and Federal Law, pursuant to 42 U.S.C. §§ 1983, 1988.

2. Venue in this Court is proper pursuant to Code of Civil Procedure §§ 394 and 395 because: (i) this proceeding is partially against Los Angeles County and this is the court in which the county is situated; and (ii) Defendants reside within this judicial district.

3. On or about September 21, 2015, a Claim for Damages was presented to the County of Los Angeles on behalf of Plaintiffs in substantial compliance with Government Code § 910, *et seq*. At the time of the filing of this First Amended Complaint, the claim had been denied.

PARTIES

4. Plaintiff CARLA WADE ("Ms. Wade") is the natural mother of NEPHI ARREGUIN, Decedent. Ms. Wade resides in and is a citizen of Peoria, Arizona.

5. Plaintiff N.A., a minor, by and through his guardian ad litem, SUMMER NELSON ("N.A."), is a natural person whom was born on September 10, 2015 in the County of Los Angeles, State of California, and is the biological child of NEPHI ARREGUIN, Decedent.

6. Defendant COUNTY OF LOS ANGELES is, and at all times mentioned herein was, a political subdivision of the State of California.

7. Defendant DEPUTY EDWARD FITZGERALD is, and at all times mentioned herein was, a deputy sheriff, peace officer, law enforcement officer, officer, agent and/or employee of the Los Angeles County Sheriff's Department, which is the law enforcement department operated by Defendant COUNTY OF LOS ANGELES, and he was acting within the course and scope of such agency and employment and under color of law herein.

8. At all relevant times herein, Defendants DOES 2 through 10, inclusive, were peace officers, officers, agents and/or employees of Defendant COUNTY OF LOS ANGELES and the Los Angeles Sheriff's Department, and was/were acting within the course and scope of said employment and under color of law. Plaintiffs are unaware of the true names and capacities of the Defendants sued herein as DOES 2 through 10, inclusive, and therefore sue these Defendants by such fictitious names. Plaintiffs will amend this First Amended Complaint to add their true names and capacities when ascertained. Plaintiffs are informed and believe, and on that basis allege, that each of the fictitiously named Defendants is liable in the manner set forth below for the acts, conduct and/or omissions concerning the events and happenings herein referred to, which proximately caused the damages and injuries to Plaintiffs and Decedent as alleged herein.

9. Plaintiffs are informed and believe, and on that basis allege that at all times and places mentioned herein each Defendant was the agent, representative and/or employee of each of the remaining Defendants and were acting within the course and scope of said agency, representation and/or employment.

10. As alleged more fully below, this First Amended Complaint arises out of the officer involved shooting death of Decedent NEPHI ARREGUIN that occurred on May 7, 2015, which was perpetrated by Defendant COUNTY OF LOS ANGELES peace officer(s), including Defendant DEPUTY EDWARD FITZGERALD, under the color of law.

11. Prior to and including May 7, 2015, and at all relevant times herein, Defendants, DEPUTY EDWARD FITZGERALD and DOES 2 through 10, inclusive,

were deputy sheriffs, law enforcement officers, peace officers, officers, agents and employees of Defendant COUNTY OF LOS ANGELES acting within the course and scope of such agency and/or employment, and under color of law. Defendants, Defendant DEPUTY EDWARD FITZGERALD and DOES 2 through 10, inclusive, are being sued in their official and individual capacities.

12. Prior to and including May 7, 2015, and at all relevant times herein, Defendants, COUNTY OF LOS ANGELES, and its employees, agents, supervisors, managers and/or representatives, and DOES 2 through 10, inclusive, were deliberately indifferent, reckless, negligent and/or careless with respect to the hiring, training, supervision and discipline of Defendant DEPUTY EDWARD FITZGERALD and Doe Defendants. As an actual, legal and proximate result of said Defendants' deliberate indifference, recklessness, negligence and carelessness Plaintiffs' Decedent was (a) subjected to the unreasonable use of excessive and/or deadly force; (b) shot and killed by Defendant DEPUTY EDWARD FITZGERALD and/or Doe Defendant peace officers; and (c) Plaintiffs and Decedent suffered the damages alleged herein. Defendants, DEPUTY EDWARD FITZGERALD and DOES 2 through 10, inclusive, who are employees, agents, supervisors, managers and/or representatives of Defendant COUNTY OF LOS ANGELES and the Los Angeles Sheriff's Department, are being sued in their official and individual capacities.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

13. On May 7, 2015, Defendants DEPUTY EDWARD FITZGERALD and/or DOES 2 through 10, inclusive, were called to the 17200 block of Pires Avenue in Cerritos, California to investigate a call of a suspicious person. Defendants first detained a woman who was believed to be with Decedent. Defendants then focused their investigation on NEPHI ARREGUIN, Decedent, who was seated in a parked automobile at or near the intersection of Pires Avenue and Beach Street. Defendants DEPUTY EDWARD FITZGERALD and/or DOES 2 through 10, inclusive, approached NEPHI

ARREGUIN and began unreasonably, without justification, shooting into the vehicle in which he was seated. Several gunshots were fired by Defendant DEPUTY EDWARD FITZGERALD and one (1) gunshot fatally wounded NEPHI ARREGUIN striking him and penetrating his chest/abdominal area. NEPHI ARREGUIN, after being shot and suffering from the trauma and shock of the gunshot wound, drove away from the scene of the shooting, but ultimately succumbed to the gunshot wound within a short distance from the original shooting scene, crashing his automobile into a nearby fire hydrant and brick wall at or near the intersection of Pires Avenue and Artesia Boulevard in Cerritos, California. As a direct and proximate result of the use of excessive and deadly force by shooting and the resulting gunshot wound, NEPHI ARREGUIN died a short time later at the scene.

14. Decedent NEPHI ARREGUIN was not armed and was not a threat to life or limb of any peace officer or bystander at the time of the shooting. Decedent made no threats or displayed any intent to commit an act of violence or bodily harm to any peace officer or bystander at the time of the shooting. As such, Defendants did not have probable cause or reason to believe that either they, or anyone else, were in danger of being killed by Decedent or sustaining severe bodily harm caused by Decedent.

15. As an actual, legal and proximate result of the aforementioned intentional, deliberately indifferent, reckless, negligent and unreasonable acts and omissions of Defendants, and each of them, Plaintiff and Decedent suffered and incurred damages, including, but not limited to, pain and suffering, mental and emotional distress, as a result of the unlawful, unreasonable and/or unjustifiable use of excessive and deadly force against Decedent, NEPHI ARREGUIN.

FIRST CAUSE OF ACTION

Violation of Plaintiffs' and/or Decedent's Rights Secured by the Fourth Amendment to be free from the use of excessive and/or deadly force, pursuant to 42 U.S.C. §§ 1983, 1988, and California Code of Civil Procedure § 377.20 *et seq*.

[Against All Defendants COUNTY OF LOS ANGELES, DEPUTY EDWARD FITZGERALD and DOES 2 through 10, inclusive.]

16. Plaintiffs reallege and incorporate by reference paragraphs 1 through 15, inclusive, as though fully set forth herein.

17. Plaintiffs assert this First Cause of Action for the violation by Defendants of Decedent's rights secured by the Fourth and Fourteenth Amendments to the United States Constitution pursuant 42 U.S.C. §§ 1983, 1988, and California Code of Civil Procedure § 377.20 et seq. in their capacity as one of Decedent's successors in interest.

18. On or about May 7, 2015, at or near the intersection of Pires Avenue and Beach Street, NEPHI ARREGUIN, Decedent, was seated in a parked automobile. Defendants entered the area on a call of a suspicious person. They initially contacted a female in the area and then turned their attention to Decedent. Defendants DEPUTY EDWARD FITZGERALD and DOES 2 through 10, inclusive, intentionally, recklessly, deliberately indifferently, and/or negligently and unreasonably, without justification, shot, wounded and eventually killed Decedent. Defendants did so, Plaintiffs are informed, believe, and therefore allege, despite the fact that they: (i) did not have probable cause or reason to believe that either they, or anyone else, were in danger of being killed by Decedent or sustaining severe bodily harm caused by Decedent; and/or (ii) had previously not taken reasonable, proper and accepted precautions and safeguards when detaining or taking into custody Decedent.

19. Defendants DOES 2 through 10, inclusive, intentionally, recklessly, deliberately indifferently, and/or negligently and unreasonably failed and refused to intervene or make any effort to stop or prevent Defendants DEPUTY EDWARD FITZGERALD and DOES 2 through 10, inclusive, from shooting, wounding and eventually killing Decedent.

20. As an actual, legal and proximate result of the intentional, deliberately indifferent, reckless, unreasonable, negligent and otherwise wrongful conduct of Defendants, and each of them, Decedent was shot and killed.

21. In engaging in the conduct alleged above, Defendants DEPUTY EDWARD FITZGERALD and DOES 2 through 10, inclusive, seized and used excessive and unreasonable force against Decedent without: (a) any reason or justification; or (b) probable cause to believe, or a reasonable belief, that said Defendants or anyone else were in danger of sustaining any injury, much less serious bodily injury or death.

22. Defendants COUNTY OF LOS ANGELES and DOES 2 through 10, inclusive, are responsible for implementing, maintaining, sanctioning and/or condoning policies, customs, practices, training and supervision with respect to the use of force against suspects such as Decedent.

23. The above-alleged conduct of Defendants DEPUTY EDWARD FITZGERALD and DOES 2 through 10, inclusive, was consistent with the training, policies, customs and practices set forth by Defendant COUNTY OF LOS ANGELES and Defendants DOES 2 through 10, inclusive, concerning the use of force against suspects such as Decedent, and/or that the use of force against Decedent by Defendants DEPUTY EDWARD FITZGERALD and DOES 2 through 10, inclusive, was ratified by Defendant COUNTY OF LOS ANGELES and Defendants DOES 2 through 10, inclusive.

24. Defendant COUNTY OF LOS ANGELES and Defendants DOES 2 through 10, inclusive, and each of them, knew or should have known that Defendants' training, policies, customs, and practices regarding concerning the use of force against suspects such as Decedent were so inadequate that it was obvious that a failure to correct them would result in future incidents of such use of force.

25. At all relevant times, Defendant COUNTY OF LOS ANGELES and Defendants DOES 2 through 10, inclusive, authorized and/or acquiesced in the aforementioned policies, customs, practices, training and supervision and the commission

of the type of acts by its officers similar to those which are alleged herein to have caused the injuries to Decedent. Furthermore, said Defendants were deliberately indifferent to the probability of the occurrence of such acts and failed to correct said policies, customs, practices, training and supervision, thereby causing the damages alleged herein.

26. Defendant COUNTY OF LOS ANGELES and Defendants DOES 2 through 10, inclusive, maintained or permitted an official policy, custom or practice of knowingly permitting the occurrence of the type of wrongs set forth above and, based upon the principles set forth in *Monell v. New York City Department of Social Services*, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978), and *City of Canton, Ohio v. Harris*, 489 U.S. 378, 109 S.Ct. 1197, 103 L.Ed.2d 412 (1989), are liable for all injuries sustained by Decedent as set forth herein.

27. Defendant COUNTY OF LOS ANGELES and Defendants DOES 2 through 10, inclusive, were objectively deliberately indifferent to the practice of subordinates, officers, employees and/or agents of the Bakersfield Police Department of unreasonably using force against persons such as Decedent.

28. Defendants COUNTY OF LOS ANGELES, and DOES 2 through 10, inclusive, had actual and/or constructive knowledge that it was the practice of subordinates, officers, employees and/or agents of Defendant COUNTY OF LOS ANGELES to unreasonably use force against persons such as Decedent.

29. The above described policies, customs, practices, training and supervision of Defendant COUNTY OF LOS ANGELES and Defendants DOES 2 through 10, inclusive, demonstrate a deliberate indifference on the part of policymakers of Defendant COUNTY OF LOS ANGELES to the constitutional rights of persons within the City, including Plaintiffs and/or Decedent, and were the cause of the violations of Plaintiffs' rights alleged herein.

30. By reason of the conduct of the Defendants, and each of them, as alleged herein, Decedent was deprived, under color of law, of his right guaranteed by the Fourth

Amendment to the United States Constitution to be free from the unreasonable use of excessive and/or deadly force.

31. As a direct and proximate result of the acts of Defendants, Decedent suffered, and thus Plaintiffs seek and are entitled to recover, general and special damages, including but not limited to medical expenses and physical, mental and emotional pain, shock, agony and suffering, in an amount according to proof at trial.

32. The aforementioned conduct of Defendants DEPUTY EDWARD FITZGERALD and DOES 2 through 10, inclusive, was done maliciously, oppressively and in conscious disregard for the rights and safety of Decent, such that an award of exemplary and punitive damages should be imposed against Defendants DEPUTY EDWARD FITZGERALD and DOES 2 through 10, inclusive, in an amount to be proven at trial.

33. Plaintiffs are entitled to recover for said injuries and damages in their capacities as Decedent's successors in interest pursuant to 42 U.S.C. § 1988 and California Code of Civil Procedure § 377.10 et seq.

34. Plaintiffs are entitled to recover their attorneys' fees pursuant to 42 U.S.C. §§ 1983, 1988.

SECOND CAUSE OF ACTION

Violation of Plaintiffs' Rights under the First and Fourteenth Amendments to a Familial Relationship and Companionship with Decedent.

[Against Defendants COUNTY OF LOS ANGELES, DEPUTY EDWARD FITZGERALD and DOES 2 through 10, inclusive.]

35. Plaintiffs reallege and incorporate by reference paragraphs 1 through 34, inclusive, as though fully set forth herein.

36. Plaintiffs, Ms. Wade and N.A. have cognizable interests under the Due Process Clause of the Fourteenth Amendment of the United States Constitution to be free from state actions that deprive them of life, liberty, or property in such a manner as to

shock the conscience, including but not limited to, unwarranted state interference in their familial relationship with Decedent who was a son to Ms. Wade and a father to N.A.

37. As a result of Defendants DEPUTY EDWARD FITZGERALD and DOES 2 through 10, inclusive, use of unreasonable excessive and/or deadly force and unjustified shooting, Decedent suffered severe physical injuries, including physical trauma and death, thereby resulting in permanent interference with Plaintiffs' familial relationship with Decedent.

38. Defendants DEPUTY EDWARD FITZGERALD and DOES 2 through 10, inclusive, acting under color of state law, thus violated the Fourteenth Amendment rights of Plaintiffs to be free from unwarranted interference with their familial relationship with Decedent, NEPHI ARREGUIN.

39. The aforementioned actions of Defendants DEPUTY EDWARD FITZGERALD and DOES 2 through 10, inclusive, along with other undiscovered conduct, shocks the conscience, in that the Defendants DEPUTY EDWARD FITZGERALD and DOES 2 through 10's, inclusive, conduct was carried out with deliberate indifference, grossly negligent, and/or with reckless disregard for and to the constitutional rights and safety of Plaintiffs, and/or with purpose to harm unrelated to any legitimate law enforcement objective.

40. As a direct and proximate cause of the acts of Defendants DEPUTY EDWARD FITZGERALD and DOES 2 through 10, inclusive, Plaintiffs suffered extreme and severe emotional distress and mental anguish. N.A. has also been deprived of Decedent's financial support, gifts or benefits, household services, love, companionship, comfort, care, assistance, protection, affection, society, moral support, training, and guidance, and will continue to be so deprived for the remainder of N.A.'s natural life. The permanent nature of NEPHI ARREGUIN's death constitutes total deprivation of the familial relationship between Decedent and the minor N.A. and Ms. Wade.

41. The conduct of Defendants DEPUTY EDWARD FITZGERALD and DOES 2 through 10, inclusive, was willful, wanton, malicious, and/or done with reckless

disregard for Plaintiffs' rights and safety and therefore warrants the imposition of exemplary and punitive damages.

42. Plaintiffs are entitled to recover their attorneys' fees pursuant to 42 U.S.C. §§ 1983, 1988.

THIRD CAUSE OF ACTION

Wrongful Death by Defendants pursuant to California Government Code §§ 815.2(a), 820(a); Civil Code § 43 and Code of Civil Procedure §§ 377.60, *et seq*.

[Against Defendants COUNTY OF LOS ANGELES, DEPUTY EDWARD FITZGERALD and DOES 2 through 10, inclusive.]

43. Plaintiffs reallege and incorporate by reference paragraphs 1 to 42, inclusive, as though fully set forth herein.

44. All State claims asserted herein against Defendant COUNTY OF LOS ANGELES are presented pursuant to LA COUNTY'S vicarious liability for acts and omissions of its employees undertaken in the course and scope of their employment pursuant to California Government Code §§ 815.2(a), 820(a) and Civil Code § 43.

45. Plaintiffs are informed and believe and thereupon allege that on May 7, 2015, Decedent, NEPHI ARREGUIN, was seated in a parked automobile at or near the intersection of Pires Avenue and Beach Street. Defendants DEPUTY EDWARD FITZGERALD and DOES 2 through 10, inclusive, approached NEPHI ARREGUIN and began unreasonably, without justification, shooting into the vehicle in which he was seated. Several gunshots were fired by Defendants DEPUTY EDWARD FITZGERALD and DOES 2 through 10, inclusive, and one (1) gunshot fatally wounded NEPHI ARREGUIN striking him and penetrating his chest/abdominal area. NEPHI ARREGUIN, after being shot and suffering from the trauma and shock of the gunshot wound, drove away from the scene of the shooting, but ultimately succumbed to the gunshot wound, after surviving for an appreciable period of time, died as a direct and

proximate result of these gunshot wound within a short distance from the original shooting scene, crashing his automobile into a nearby fire hydrant and brick wall at or near the intersection of Pires Avenue and Artesia Boulevard in Cerritos, California. As a direct and proximate result of the use of excessive and deadly force by shooting and the resulting gunshot wound, NEPHI ARREGUIN died a short time later at the scene.

46. Both prior to and during the time in which he was fatally shot, NEPHI ARREGUIN was not armed with any weapon, did not display a weapon, and posed no reasonable threat of violence to any peace officer, nor to any other individual. Both prior to and during the time in which he was shot dead, NEPHI ARREGUIN made no aggressive movements, no furtive gestures, and no physical movements which would suggest to a reasonable peace officer that he was armed with any kind of weapon, or had the will, or the ability to inflict substantial bodily harm against any individual. Both prior to and during the time in which Defendants DEPUTY EDWARD FITZGERALD and DOES 2 through 10, inclusive, shot and killed NEPHI ARREGUIN, Defendants, who shot him, were not faced with any circumstances which would have led a reasonable peace officer to believe that he posed a risk of death, or serious bodily injury to any person.

47. Plaintiffs further allege that Defendants DEPUTY EDWARD FITZGERALD and DOES 2 through 10, inclusive, mentioned herein, failed to exercise reasonable and ordinary care in committing the acts alleged herein, by actions and inactions which include, but are not limited to, negligently failing to determine that NEPHI ARREGUIN was unarmed when he was shot, negligently failing to determine the fact that NEPHI ARREGUIN posed no threat of physical harm to any person when he was shot, negligently inflicting physical injury upon NEPHI ARREGUIN as described herein, and negligently employing deadly force against NEPHI ARREGUIN when the same was unnecessary and unlawful. All of these acts proximately caused NEPHI ARREGUIN's death on May 7, 2015.

48. Plaintiffs are informed and believe, and thereon allege, that on and before May 7, 2015, Defendants DOES 2 through 10, inclusive, and individual employees of Defendant COUNTY OF LOS ANGELES and the Los Angeles Sheriff's Department who were responsible for hiring and supervising Defendant deputy(ies), including Defendants DEPUTY EDWARD FITZGERALD and DOES 2 through 10, inclusive, negligently hired, trained, supervised, employed and/or managed Defendant deputy(ies), including Defendants DEPUTY EDWARD FITZGERALD and DOES 2 through 10, inclusive, in that they knew or, in the exercise of reasonable diligence, should have known, that Defendant deputy(ies) were dangerous and violent employees, prone to shoot firearms without reasonable justification, and in a manner that would demonstrate callous disregard for the rights and safety of civilian citizens, including Plaintiffs and Decedent, and assault and batter persons and/or use unnecessary, unreasonable, deadly, and/or unlawful physical force without reasonable justification. All of these negligent acts proximately caused NEPHI ARREGUIN's death on May 7, 2015.

49. Additionally, on and before May 7, 2015, DOES 2 through 10, inclusive, and individual employees of Defendant COUNTY OF LOS ANGELES and the Los Angeles Sheriff's Department who were responsible for hiring, training, and supervising peace officers, including Defendants DEPUTY EDWARD FITZGERALD and DOES 2 through 10, inclusive, failed to exercise ordinary and reasonable care in the training and supervision of peace officers, including Defendants DEPUTY EDWARD FITZGERALD and DOES 2 through 10, inclusive, with regard to the reasonableness, safety, and constitutionality of the use of deadly force against civilians, and with regard to the use of force against unarmed individuals; and negligently failed to properly train and supervise peace officers, including Defendants DEPUTY EDWARD FITZGERALD and DOES 2 through 10, inclusive, concerning the reasonableness, safety, and constitutionality of the use of deadly force, and in the use of force as it relates to using excessive force, unjustifiably using deadly force against unarmed and non-dangerous suspects, inadequately training and supervising peace officers with respect to the reasonable and

proper use of deadly force, and inadequately training and supervising patrol officers with respect to the reasonable and proper police procedures for the arrest and detention of fleeing suspects; and despite having the means and the ability to properly train such officers, and despite having notice and knowledge of the need to properly train such officers, failed to do so. All of these negligent acts proximately caused NEPHI ARREGUIN's death on May 7, 2015.

50. As a direct and proximate result of the death of Decedent NEPHI ARREGUIN and the above-described conduct of Defendants, and each of them, NEPHI ARREGUIN's heirs, the Plaintiffs herein, have sustained substantial economic damages and non-economic damages resulting from the loss of the love, companionship, comfort, care, assistance, protection, affection, society, moral support, training, guidance, services and support of Decedent in an amount according to proof at trial.

51. As a further direct and proximate result of the above-described conduct of the Defendants, and each of them, and the ensuing death of NEPHI ARREGUIN, Plaintiffs have incurred funeral and burial expenses in an amount according to proof at trial.

FOURTH CAUSE OF ACTION

Assault and Battery pursuant to California Government Code §§ 815.2(a), 820(a); Civil Code § 43 and California Code of Civil Procedure § 377.20, *et seq*.

[Against Defendants COUNTY OF LOS ANGELES, DEPUTY EDWARD FITZGERALD and DOES 2 through 10, inclusive.]

52. Plaintiff realleges and incorporates by reference paragraphs 1 to 51, inclusive, as though fully set forth herein.

53. All State claims asserted herein against Defendant COUNTY OF LOS ANGELES are presented pursuant to LA COUNTY'S vicarious liability for acts and omissions of its employees undertaken in the course and scope of their employment pursuant to California Government Code §§ 815.2(a), 820(a) and Civil Code § 43.

54. Plaintiffs Ms. Wade and N.A., as Successors in Interest to Decedent NEPHI ARREGUIN, bring this cause of action on behalf of NEPHI ARREGUIN, who would, but for his death, be entitled to bring this cause of action, and is set forth herein to redress the deprivation, under color of statute, ordinance, regulation, policy, custom and/or practice secured to NEPHI ARREGUIN by the laws of the State of California and the California Constitution.

55. As alleged above, on May 7, 2015, Defendants DEPUTY EDWARD FITZGERALD and DOES 2 through 10, inclusive, used unreasonable and excessive or deadly force, without justification, upon NEPHI ARREGUIN while he was seated in an automobile at or near the intersection of Pires Avenue and Beach Street in Cerritos, California. Defendants DEPUTY EDWARD FITZGERALD and DOES 2 through 10, inclusive, approached NEPHI ARREGUIN and began unreasonably, without justification, shooting into the vehicle in which he was seated. Several gunshots were fired by Defendants DEPUTY EDWARD FITZGERALD and DOES 2 through 10, inclusive and one (1) gunshot fatally wounded NEPHI ARREGUIN striking him and penetrating his chest/abdominal area. NEPHI ARREGUIN, after being shot and suffering from the trauma and shock of the gunshot wound, drove away from the scene of the shooting, but ultimately succumbed to the gunshot wound, after surviving for an appreciable period of time, died as a direct and proximate result of these gunshot wound within a short distance from the original shooting scene, crashing his automobile into a nearby fire hydrant and brick wall at or near the intersection of Pires Avenue and Artesia Boulevard in Cerritos, California. As a direct and proximate result of the use of excessive and deadly force by shooting and the resulting gunshot wound, NEPHI ARREGUIN died a short time later at the scene.

56. Each of the individual Defendants, including Defendants DEPUTY EDWARD FITZGERALD and DOES 2 through 10, inclusive, acted in concert, and without authorization of law and each of the individual Defendants, separately and in concert, acted willfully, knowingly, with reckless disregard and deliberate indifference to

the known consequences of their acts and omissions, and purposefully with the intent to deprive Plaintiffs and Plaintiffs' Decedent of their protected rights and privileges, and did in fact violate those rights and privileges, entitling Plaintiffs to punitive and exemplary damages in an amount to be proven at trial.

57. As a direct and proximate result of the aforesaid acts, omission, customs, practices, policies and decisions of the Defendants and each of them, Plaintiffs' Decedent suffered great mental and physical pain, suffering, anguish, fright, nervousness, anxiety, shock, humiliation, indignity, embarrassment, and apprehension prior to his death; further, Plaintiffs' decedent incurred expenses for medical treatment and/or services prior to his death in an amount according to proof at trial.

FIFTH CAUSE OF ACTION

Civil Conspiracy, California and Federal Law, pursuant to 42 U.S.C. §§ 1983, 1988.

[Against All Defendants COUNTY OF LOS ANGELES, Defendants DEPUTY EDWARD FITZGERALD and DOES 2 through 10, inclusive.]

58. Plaintiffs reallege and incorporate by reference paragraphs 1 to 57, inclusive, as though fully set forth herein.

59. Defendants, DEPUTY EDWARD FITZGERALD and DOES 2 through 10, inclusive, entered into a civil conspiracy and agreement, to violate the civil rights of Plaintiffs and Plaintiffs' Decedent, by engaging in the conduct, acts and omissions alleged herein and by assisting in perpetrating the violation of Plaintiffs' and Plaintiffs' Decedent's constitutional rights and/or by committing the torts described herein. In addition to the conduct alleged above, said conspiracy and agreement is evidenced by the fact, inter alia, that said Defendants: (a) ordered, directed, supervised, authorized, aided, abetted, approved, ratified and/or deliberately and knowingly failed, refused and/or refrained from intervening in or stopping the wrongful conduct alleged herein; and/or (b) engaged in conduct alleged herein that was unlikely to have been undertaken without an agreement. None of the individual Defendants would have unreasonably violated

Plaintiffs' or Plaintiffs' Decedent's constitutional rights but for an agreement with the other individual Defendant(s).

60. Defendants DEPUTY EDWARD FITZGERALD and DOES 2 through 10, inclusive, are legally responsible for, and indeed proximately and legally caused, the damages alleged herein for the reasons alleged above and incorporated herein by reference.

ATTORNEYS' FEES AND COSTS

61. Pursuant to the provisions of 42 U.S.C. § 1988, Plaintiff is entitled to and demands an award of reasonable attorneys' fees and costs attendant to prosecuting this action in an amount to be determined according to proof at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks damages as follows:

a. General damages – In an amount to be proven at trial;
b. Special damages – In an amount to be proven at trial;
c. Punitive damages – Against the individual Defendants, in an amount to be proven at trial;
d. An award of prejudgment interest;
e. An award of post-judgment interest pursuant to 28 U.S.C. § 1961(a);
f. Attorney's fees and costs of suit incurred herein; and
g. For such other and further relief as the Court deems just and proper.

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PLAINTIFFS DEMAND A TRIAL BY JURY

Dated: October 26, 2016

LAW OFFICES OF MILTON C. GRIMES, APC

By: */s/ Milton C. Grimes, Esq.*

Attorneys for Plaintiffs CARLA WADE, and N.A., a minor, by and through his guardian ad litem, SUMMER NELSON, Individually and as Successors in Interest of NEPHI ARREGUIN, Deceased

CERTIFICATE OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 3774 W. 54th Street, Los Angeles, California 90043

On **October 26, 2016**, I served the foregoing document described as follows:
FIRST AMENDED COMPLAINT

____ by placing the true copies thereof
_X_ by placing the original

addressed as follows:

Mark Rutter, Esq. (SBN 58194)
mrutter@crdlaw.com
Danielle C. Foster (SBN 281385)
dfoster@crdlaw.com
CARPENTER, ROTHANS & DUMONT
888 S. Figueroa St., #1960
Los Angeles, CA 90017
Telephone: (213) 228-0400
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Attorneys for Defendant, COUNTY OF LOS ANGELES

____ **BY MAIL** - I enclosed such document in a sealed envelope and caused such envelope to be deposited in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with this firm's practice of collection and processing of correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing affidavit.

_X_ **BY CM/ECF -** I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States District Court Central District of California by using the court's CM/ECF system on the date written above. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

____ **BY OVERNIGHT DELIVERY** - I enclosed such document in a sealed envelope and caused it to be deposited in a box or other facility regularly maintained by the express service carrier, or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for, addressed to the person on whom it is to be served, at the office address as last given by that person.

____ **BY FACSIMILE** - I caused such document to be transmitted to a facsimile machine maintained by the person on whom it is served at the facsimile machine telephone number as last given by that person.

____ **BY PERSONAL SERVICE** - I enclosed such document in a sealed envelope and caused it to be delivered by hand to the offices of the addressee(s).

_X_ I declare under penalty of perjury under the laws of the State of California and the United States of America that the above is true and correct.

Executed on **October 26, 2016**, at Los Angeles, California.

/s/ Cindy Crippen
CINDY CRIPPEN